In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1272

GREEN STREET ASSOCIATION, JAMES BATTS, VELMA BATTS, and all Other Plaintiffs Named in the Complaint, PETITIONERS

v.

RICHARD J. DALEY, CITY OF CHICAGO, DEPARTMENT OF URBAN RENEWAL OF THE CITY OF CHICAGO, LEWIS W. HILL, ROBERT C. WEAVER, WILLIAM L. SLAYTON and A. DEAN SWARTZEL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR RESPONDENTS WEAVER, SLAYTON AND SWARTZEL

Petitioners are Negroes who own or lease property in the Central Englewood neighborhood of Chicago, and an association organized to protect their interests. In this suit brought against officials of the City of Chicago and of the Department of Housing and Urban

Development they seek to enjoin the implementation of an urban renewal plan financed under the Housing Act of 1949, 42 U.S.C. 1441 *et seq.* The dismissal of their complaint by the district court was affirmed by the court of appeals.

The complaint against the federal officials pressed in the petition for a writ of certiorari is that they have approved the expenditure of federal funds to carry out an "Urban Renewal Plan * * *, wherein separate relocation facilities, based on race, for persons to be displaced from the project area, are given," in violation of Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d (App. 21-23). Presumably, petitioners would have the district court order the Department of Housing and Urban Development cut off federal financial assistance to the Central Englewood plan so long as the relocation provisions of the plan are discriminatory. The short answer to this claim is that it is addressed to the wrong forum.

As the court of appeals observed, granting the order prayed for would circumvent the detailed administrative procedure established by Title VI of the Civil Rights Act for the termination of federal financial assistance on the ground of discrimination, substituting the injunctive process for the administrative discretion provided for by the Act. Under Title VI, before funds may be cut off on grounds of discrimination, the federal agency involved must first make a determination that compliance with Section 601 cannot be secured by voluntary means. 42 U.S.C. 2000d-1. The agency is given discretion to seek compliance by legal means other than a cut-off of funds. *Id.* Any

cut-off must be preceded by a formal administrative hearing and administrative findings. *Id.* These findings are subject to judicial review under the Administrative Procedure Act. 42 U.S.C. 2000d-2. And the cut-off may not become effective until 30 days after the head of the agency files with the appropriate committees of the House and Senate a full written report. 42 U.S.C. 2000d-1. Moreover, pursuant to Congressional mandate (*id.*), the Housing and Home Finance Agency has issued regulations which provide, among other things, that persons who believe themselves victims of discrimination prohibited by Section 601 may file written complaints, which the Agency must promptly investigate. 24 C.F.R. 1.7(b), (c). And it is provided that if informal efforts to obtain compliance fail, the case may be referred to the Department of Justice for appropriate proceedings under other provisions of the Civil Rights Act of 1964 or other federal or State law. 24 C.F.R. 1.8(a).

The legislative history of Title VI makes it clear that Congress attached considerable importance to these administrative procedures, and in particular to the discretion granted the federal agencies to seek means of compliance short of cutting off funds.[1] A

---

[1] Senator Humphrey explained that the purpose of the statutory procedure was to guarantee that the cut-off of funds is a "last resort, to be used only if all else fails to achieve the real objective, the elimination of discrimination in the use and receipt of Federal funds." 110 Cong. Rec. 6544 (March 30, 1964). He further explained (*ibid.*):

> Moreover, the purpose of title VI is not to cut off funds, but to end racial discrimination. This purpose is re-

federal court injunction requiring a cut-off of funds, without compliance with the statutory procedures, would frustrate the Congressional purpose.[2]

For these reasons certiorari to review the dismissal of the complaint as to the federal respondents is not warranted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MAY 1967.

---

flected in the requirement that any action taken by the Federal department or agency must be "consistent with the achievement of the objective of the statute authorizing the financial assistance in connection with which the action is taken." In general, cutoff of funds would not be consistent with the objectives of the Federal assistance statute if there are available other effective means of ending discrimination. And section 602, by authorizing the agency to achieve compliance "by any other means authorized by law" encourages agencies to find ways to end racial discrimination without refusing or terminating assistance.

[2] We do not understand petitioners to assert a conflict between the decision below and *Bossier Parish School Board* v. *Lemon*, 370 F.2d 847 (C.A. 5), insofar as the ruling below affirms dismissal of the complaint against the *federal* officials. Nor could they. The cited case merely reasons that a local agency which has accepted federal funds is under a judicially enforceable duty to eliminate discrimination proscribed by Section 601.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 262180 858